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OFFICE-SUPREME COURT, U.S.
FILED
MAY 20 1960
JAMES R. BROWNING, Clerk

Nos. 840 and 841

In the Supreme Court of the United States

OCTOBER TERM, 1959

EDNA M. FAUCI, PETITIONER

v.

UNITED STATES OF AMERICA, THE DISTRICT DIRECTOR OF INTERNAL REVENUE, BOSTON, MASSACHUSETTS DISTRICT, AND EDWIN F. HANNON, JR., RECEIVER

FRANCES C. DEMERLY, PETITIONER

v.

EDWIN F. HANNON, JR., RECEIVER, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR RESPONDENTS IN OPPOSITION

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OPINION BELOW

The consolidated opinion of the Court of Appeals (No. 840, Pet. 10–15; No. 841, Pet. 9–14) is reported at 275 F. 2d 234. The District Court filed no written opinion.

JURISDICTION

The judgments of the Court of Appeals (No. 840, Pet. 16; No. 841, Pet. 15) were entered February

24, 1960. The petitions for writs of certiorari were filed on April 7, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

Whether the judgment of the District Court entered in a prior action brought by the United States to foreclose its liens for delinquent taxes, to which these petitioners were parties and which involved the parcel of real property here in issue, precludes the instant actions collaterally attacking that judgment.

STATUTES INVOLVED

Internal Revenue Code of 1954:

> SEC. 7401. AUTHORIZATION.
>
> No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.
>
> (26 U.S.C. 7401.)
>
> SEC. 7402. JURISDICTION OF DISTRICT COURTS.
>
> (a) *To Issue Orders, Processes, and Judgments.*—The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not ex-

clusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

* * * * *

(26 U.S.C. 7402.)

SEC. 7403. ACTION TO ENFORCE LIEN OR TO SUBJECT PROPERTY TO PAYMENT OF TAX

(a) *Filing.*—In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.

(b) *Parties.*—All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

(c) *Adjudication and Decree.*—The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings

of the court in respect to the interests of the parties and of the United States.

* * * * *

(26 U.S.C. 7403.)

DISCUSSION

On September 22, 1959, after a judgment of the District Court entered on April 23, 1958, in a suit in which petitioner in No. 840, Fauci, was a party defendant, had become final, petitioner filed a petition in the District Court (R. 4–6)[1] praying that the United States, the District Director of Internal Revenue of Boston, and the Receiver, be enjoined from selling certain real estate, the rights to which had been determined in the prior judgment. The District Court dismissed the petition. (R. 6–10.) The Court of Appeals affirmed. (Pet. 10–15.)

On August 21, 1959, petitioner in No. 841, Denehy (who had also been a defendant in the prior suit), brought an action in a state court (R. 10–12) alleging that she was the holder of a mortgage against certain real property, the rights to which had been determined in the prior judgment, and praying that an order be entered permitting her to foreclose. The Receiver filed a general appearance in the state court, and on October 6, 1959, filed his petition in the District Court (R. 6–9) for an order enjoining petitioner

[1] "R." citations herein are to the printed pages of the Record Appendix to the brief filed by the petitioners, respectively, with the Court of Appeals. "Supp. R." citations herein are to the printed pages of the Record Appendix to the consolidated brief filed in the Court of Appeals on behalf of the appellees in both appeals.

from prosecuting the state court action. The District Court permanently enjoined petitioner's prosecution of the state court suit. (R. 39–40.) The Court of Appeals affirmed the District Court, directing, however, that the portion of the order directing Denehy to convey a discharge of the mortgage be deleted as "unnecessary and excessive." (Pet. 9–14.)

The facts as to the prior suit are as follows: In 1955, an action was brought in the District Court of Massachusetts by the United States pursuant to Section 7401 *et seq.* of the Internal Revenue Code of 1954, *supra*, against C. M. Fauci Company, Inc., and several other defendants, including Edna M. Fauci and Frances C. Denehy, petitioners herein. (Supp. R. 18–23.) The complaint alleged that deficiencies had been assessed against the taxpayers, creating liens in favor of the United States on taxpayers' property and rights to property; that taxpayers were insolvent during the taxable years involved and subsequently; that the petitioners and other defendants had received certain property from taxpayers without giving adequate consideration therefor; that the taxpayers were entitled to the return of such property or other benefit, or the proceeds therefrom. (Supp. R. 19–22.)

The complaint further alleged that by virtue of its liens upon all property and rights to property of the taxpayers, the United States was entitled to such property or its proceeds in the hands of the petitioners and other defendants, and that the United States was further entitled to the benefits of all other rights and claims taxpayers may have against the defendants. (Supp. R. 22.) One of the properties

described in the complaint was the parcel of improved realty known as 139–141 Mystic Avenue, Medford, Massachusetts, which is the same property involved in each of the petitions here. (Supp. R. 21; No. 840, R. 9; No. 841, R. 4.)

Each of the petitioners answered, denying the above allegations of the complaint. (Supp. R. 24, par. 4; Supp. R. 26.) Following a jury verdict the District Court, on April 23, 1958, entered a money judgment against the taxpayers for the full amount claimed, and appointed Edwin F. Hannon, Jr., as receiver to sell certain real estate, including the property involved in the petitions here, and deposit the proceeds in court. In addition, the judgment provided in paragraph 5 that the claim and lien of the United States with respect to the property at 139–141 Mystic Avenue, Medford (the property involved here) and other properties "has priority over the claims of all parties to this action." And in paragraph 6 thereof that the proceeds of the sale of the property, including 139–141 Mystic Avenue, "shall be first distributed, by order of Court, to plaintiff United States of America in satisfaction of its judgments against C. M. Fauci Co., Inc. and Charles M. Fauci, with any excess to be distributed as shall be provided by the Court."[1] The District Court's judgment also provided that the total amount to be recovered by the Government "from all property involved and from all defendants" should not exceed

[1] No money judgment was entered against Denehy. A money judgment was entered against Edna M. Fauci for $8,186.54 with interest. (No. 840, R. 3.)

$156,686.68 plus interest and costs. (No. 840, R. 2–3.)

Appeals from the judgment were taken by various parties, including these petitioners, which were subsequently dismissed (without objection in the appeal of petitioner Denehy) by the Court of Appeals on motion of the United States for want of diligent prosecution. See the District Court's docket entries of May 11, 1959 and June 15, 1959. (Supp. R. 18.)

It is thus apparent that petitioners are attempting to raise issues which were fully adjudicated in a prior judgment of the District Court which has become final. In any event, no question warranting review by this Court is presented.

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

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MAY 1960.

U.S. GOVERNMENT PRINTING OFFICE: 1960